IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4302 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRISUNS CHEMICAL INDUSTRY LIMITED & 2 - Applicant(s)
Versus
M/S. RAJSHREE INDUSTRIES THRO'PARTNER BHAVANJI G. PATODIA & 1 - Respondent(s)

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Appearance :
MR BR GUPTA for Applicant(s) : 1 - 3.
MS SEJAL K MANDAVIA for Respondent(s) : 1,
MR.KT DAVE APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/07/2007

ORAL JUDGMENT

1. The petitioners have invoked the provisions of Sections 482 and 483 of the Code of Criminal Procedure, 1973 (for short “the Code”) to challenge the order dated 30.10.2001 of learned J.M.F.C., Jetpur whereby, the investigation report submitted by the police in Criminal Enquiry No.18 of 2000 was not

accepted and process was ordered to be issued against the petitioners for the alleged offences punishable under Sections 406, 420 and 114 of the Indian Penal Code.

2. It was submitted by learned counsel Mr.B.R. Gupta that, according to the investigation report submitted by the police, no offence was made out against the petitioners but after perusing the papers of investigation, the Court had arrived at a different conclusion and even recorded a finding in the impugned order that the offence was disclosed and the original complainant had not committed any error of law or fact. He further submitted that bare reading of the complaint itself did not disclose the offences alleged against the petitioners.

3. Learned counsel Ms.Mandavia, appearing for the original complainant, submitted that, admittedly, earlier petition of the petitioners, being Criminal Misc. Application No.3274 of 2000, was withdrawn in view of filing of the investigation report and the material on which, the trial court has relied is not placed on record of this petition.

4. In the above facts and circumstances, obviously, it is not possible to arrive at a conclusion different from that recorded by the trial court without perusal of the papers of investigation which were before the trial court. As for the anxiety of the petitioners that the findings of fact as regards

guilt of the petitioners and veracity of the statement recorded by the police, it is clarified that the tentative findings for deciding the issue of acceptance or non-acceptance of the investigation report submitted by the investigating agency would not be binding on the parties and the Court during the course of trial. Therefore, the petition is required to be dismissed as devoid of any substance with the observation that the trial court may proceed from the stage of the impugned order, as expeditiously as practicable, in accordance with law without being influenced by the findings recorded and conclusions drawn in the impugned order for the purpose of making the impugned order. Rule is discharged and interim relief is vacated with no order as to costs.

(D.H.WAGHELA, J.)

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